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To:
Examiner: PHILIPPE, Gims S.
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Art Unit:
2613

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Subject:

Application No.: 09/892,553; Inventor: Mark Lewis
Filed: 6/28/2001 Docket No. 42P11166

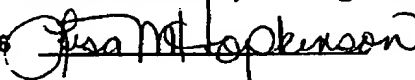
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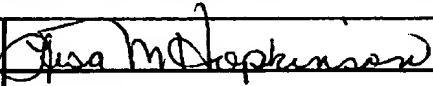
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	First Named Inventor	Mark Lewis	
	Art Unit	2613	
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of Mark Lewis

Atty. Docket No: 42P11166

App. Serial. No.: 09/892,553

Group Art Unit: 2613

Filed: 06/28/2001

Examiner: Gims S. Philippe

Title: LOCATION BASED IMAGE SHARING

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BRIEF ON APPEAL

Pursuant to Appellant's Notice of Appeal filed on June 22, 2006, Appellant presents this Brief and fee under 37 C.F.R. § 1.17(c) in appeal of the Final Rejection dated February 22, 2006.

I. REAL PARTY IN INTEREST.

Intel Corporation is the real party in interest.

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II. RELATED APPEALS AND INTERFERENCES.

Regarding appeals known to Appellant, the Appellant's legal representatives, or assignee that may directly affect or be directly affected by or have a bearing on the Board's decision in the present appeal, Appellants direct the honorable Board of Patent Appeals and Interferences to co-pending Patent Application, Serial No: 09/912,427 (Attorney Docket No: P11167, Publication No. US2003/0078968, hereafter "P11167"), also assigned to Appellant. Without conceding that P11167 is related in any way to, or that it should have any impact on, the present appeal, Appellants nonetheless bring this matter to the Board's attention because the present case was referenced during the early phase of prosecution of P11167.

There are no interferences before the Board of Patent Appeals and Interferences known to Appellant, the Appellant's legal representatives, or assignee that will directly affect or be directly affected by or have a bearing on the Board's decision in the present appeal.

III. STATUS OF CLAIMS

Claims 1-37 are pending in the application. Claims 1-37 stand finally rejected and are the claims subject to this appeal as are reproduced in Appendix A.

IV. STATUS OF AMENDMENTS

No amendments were filed after the Final Office Action dated February 22, 2006 (hereafter "Final Office Action").

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V. SUMMARY OF CLAIMED SUBJECT MATTER

Simply stated and generally speaking, one embodiment of Appellant's invention (as captured in independent Claims 1, 9, 17, 25 and 31) is directed to a method, system and article for image sharing based upon location. A sharing rule is provided which defines with which one or more recipients images are shared based on location-identifying information (in all the independent claims: "defining a sharing rule that specifies one or more recipients with whom an images should be shared based on location-identifying information associated with the image"). Location-identifying information associated with an image is provided to the sharing rule to determine the one or more recipients with which the image should be shared (in all the independent claims: "applying location-identifying information associated with an the image to the sharing rule to determine the one or more recipients with whom the image should be shared"). Alternatively, a sharing engine applies location-identifying information associated with an image to the sharing rule to determine the one or more recipients with which the image should be shared. (Specification, Page 3, line 31 – Page 4, line 5).

As described in further detail in the Specification on Pages 4-6, location-identifying information includes latitude/longitude coordinates provided by a global positioning system (GPS) included in or interoperating with the camera, manual location-identifying information associated with the image by the user in the camera or in a computer system into which the image is loaded, radio frequency identification (RFID) information provided by a RFID system included in or interoperating with the camera (e.g. a camera capable of reading RFID tags that are used to mark locations such as

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beacons), or any other location-identifying information associated with an image whether automatically or manually. The location-identifying information may also be associated with the image before, contemporaneously with, or after the image is taken and may be associated with the image in the camera or elsewhere such as on a computer system. Indeed, the image may be further processed by, for example, changing format, before or after the location-identifying information is associated with the image.

Once an image with location-identifying information is obtained, the location-identifying information may need to be converted to or associated with location data such as a traditional location name, street address(es), special name(s) (e.g. "John's house"), etc. for application to one or more sharing rules. The location-identifying information, whether in its original form or in the form of relevant location data, is then applied to one or more sharing rules, if any are applicable, to determine to which one or more recipients an image should be made available. (Specification, Pages 4-6).

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The issues for consideration in this appeal are as follows:

- A. Whether Claims 1, 2, 4-7, 9-11, 13-15, 17, 18, 21-23, 25 and 28-37 are properly rejected under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 6,157,401 ("Wiryaman") in view of U.S. Patent No. 5,760,917 ("Sheridan").
- B. Whether Claims 3, 8, 11, 12, 16, 19, 20, 24, 26 and 27 are properly rejected under 35 U.S.C. § 103 as being unpatentable over Wiryaman in view of Sheridan, in further view of U.S. patent No. 6,567,775 (Maali).

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VII. ARGUMENTS

A. THE COMBINATION OF WIRYAMAN AND SHERIDAN IS IMPROPER.

First and foremost, Appellant respectfully submits that the Examiner inappropriately combined Wiryaman and Sheridan. Specifically, Wiryaman discloses end-point-initiated multipoint video conferencing. Sheridan, on the other hand, discusses an image distribution method and system. Nothing in either reference suggests that one of ordinary skill in the art would have thought to combine the two baring hindsight. The mere fact that a combination of the two may have produced beneficial results does not *prima facie* motivate a combination of the two. In other words, the fact that the combined references may provide a benefit does not render the combination of the references obvious or proper. As set out in M.P.E.P. § 706.02(j), "(t)here must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings." Appellant respectfully submits that there is no such motivation.

Wirayaman is directed to a videoconferencing gatekeeper that inspects the alias-address fields in admission-request messages from video conferencing endpoints to determine whether their formats indicate how the alias addresses should be treated (Wirayaman, Abstract). In other words, it focuses on parsing alias-address fields to determine whether participant requests should be approved to join a video conference. Sheridan, on the other hand, is an image distribution system to distribute images from a

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central hub to third parties (Sheridan, Col. 2, lines 11-17). There is nothing that would motivate one of ordinary skill in the art of image distribution to combine these two references because each of these references is directed to different technologies with significantly different focus (examining addresses and aliases versus distributing images). Appellant respectfully submits that the Examiner's alleged motivation is in fact based solely on hindsight and is a mere articulation of a desirable result without any showing whatsoever that the combination of the references is enabled and/or may properly be combined. Appellant thus once again emphasizes that a desirable result *cannot* in and of itself be deemed to be a motivation and respectfully requests the rejections based on this combination of references to be overturned for at least this reason.

B. THE CLAIMS ARE NOT OBVIOUS OVER THE CITED REFERENCES AND THE CLAIM REJECTIONS SHOULD BE REVERSED.

i) The Examiner failed to meet the burden of establishing a *prima facie* case of unpatentability

As a preliminary matter, Appellant respectfully submits that the rejection of Claims 1-37 is facially deficient because the Examiner has not established a *prima facie* case of unpatentability. As is well-established, in order to establish a *prima facie* case of unpatentability under 35 U.S.C. § 103, the combination of the cited prior art must teach or suggest every limitation of the claims being rejected. Therefore, if even one claim

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element or limitation is not taught or suggested by the combination of references, a *prima facie* case is not established. Additionally, as the Federal Circuit has noted,

"As adapted to *ex parte* procedure, *Graham* [v. John Deere Co.] is interpreted as continuing to place the 'burden of proof on the Patent Office which requires it to produce the factual basis for its rejection of an application under sections 102 and 103.'"

In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984) (citing *In re Warner*, 379 F.2d 1011, 1016, 154 USPQ 173, 177 (CCPA 1967)). The Examiner thus has the burden of producing a factual basis for his rejection and for establishing unpatentability by identifying how each recited claim element is allegedly disclosed by the cited reference(s) or combination of references. The Examiner has failed to establish such a *prima facie* case (i.e., one based on factual basis) and has merely provided bare allegations that the combination of references render the claims unpatentable. The Examiner's "motivation" as stated in the Office Action dated September 8, 2005 (referred to in the Final Office Action) is as follows:

"It is noted that although Wirayaman discloses sharing images it is silent about a rule that specifies one or more recipients with whom images should be shared based on location-identifying information.

Sheridan discloses sharing images based on a rule that specifies one or more recipients with whom images should be shared based on location-identifying information (See Sheridan col. 5, lines 10-18, col. 6, lines 13-32, and lines 56-63).

Therefore, it is considered obvious that one skilled in the art at the time of the invention would recognize the advantage of modifying Wirayaman's method by incorporating Sheridan's rule that specifies one or more recipients with whom images should be shared based on location-identifying information. The motivation for such a modification in Wirayaman is to allow users to readily distribute stored images to third parties at remote terminal once a shared rule granting access is established as taught by Sheridan (See Sheridan Col. 2, lines 11-17)."

Office Action, Sept 8, 2005, page 3

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Appellant fails to see any "factual basis" for the combination of references. Instead, the Examiner's alleged motivation is first and foremost conclusory regarding what is taught by Sheridan ("Sheridan discloses sharing images based on a rule that specifies one or more recipients with whom images should be shared based on location-identifying information") because there is no such language in Sheridan. More importantly, however, the Examiner's statement of the alleged motivation is in fact a statement of a desired result ("to allow users to readily distribute stored images to third parties at remote terminal"). Appellant respectfully submits that the Examiner has made no attempt whatsoever to show why those of ordinary skill in the art of image sharing would combine these two references in the manner claimed. Specifically, with respect to Wirayaman which does not focus at all on sharing images, but rather on examining *addresses* (i.e., identity information, rather than any type of location information) to determine who to admit into a conference, the Examiner makes no showing of why one of ordinary skill in the art would combine Wirayaman with Sheridan. Appellant respectfully submits that the Examiner's failure to establish a *prima facie* case renders this rejection improper and submits that the rejection of Claims 1-37 should thus be reversed for at least this reason.

ii) The combination of references cited by the Examiner do not render Claims 1-32 unpatentable

The lack of a *prima facie* case notwithstanding, Appellant hereby presents detailed arguments for why Claims 1-37 are patentable over the cited references.

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(a) Claims 1, 2, 4-7, 9-11, 13-15, 17, 18, 21-23, 25 and 28-37 are patentable over Wiryaman and/or Sheridan, alone or in combination.

Independent Claims 1, 9, 17, 25 and 31 are method, system and computer program product claims directed to embodiments of the invention. As such, these claims all include similar elements, namely the elements of defining a sharing rule that specifies one or more recipients with whom an images should be shared based on location-identifying information associated with the image and applying location-identifying information associated with an the image to the sharing rule to determine the one or more recipients with whom the image should be shared. (or corresponding elements for each claim type). The Examiner collectively rejected the independent claims based on the same rationale in the Office Action and Appellant shall therefore address the rejections to these claims collectively. Any reference hereafter to "the independent claims" shall encompass all the independent claims (Claims 1, 9, 17, 25 and 31).

The Examiner implies that Wiryaman teaches all elements of the claimed invention with the exception of "a rule that specifies one or more recipients with whom images should be shared based on location-identifying information". In other words, the Examiner concedes that Wiryaman does not teach or suggest one of the core element of the independent claims, namely the use of location-identifying information. The Examiner suggests, however, that Sheridan teaches this element and thus the combination of the references teaches or suggests all elements of the independent claims. Appellants strongly disagree.

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Appellants respectfully disagrees with the Examiner's contentions that Sheridan discloses this element and/or that the combination of Wirayaman with Sheridan would have been obvious to one of ordinary skill in the art. First and foremost, Appellants respectfully submits that Sheridan does not teach or suggest this element of the claimed invention. For example, Col. 5, lines 10-18 of Sheridan describe:

"Each granted access right set is then stored at hub station 201 in association with the corresponding third party's *electronic address* and an access identification for that third party. The access identification may be an access code assigned by the user or hub station 201, or may simply be the third party's electronic mail ("e-mail") address, or may be an *electronic address* in the form of the user identification of another user of the system." (emphasis added)

Again, Sheridan describes defining access according to a user's network or electronic *address* rather than a user's location. It is well known in the art that network addresses may be used to identify devices on a network, but these network addresses do not identify a physical location of the device. Thus, the scheme described in Sheridan resembles prior art schemes of sharing images, as described in the Background section of the specification (page 2, lines 9-20):

"Many such Web sites also offer a user the ability to send an e-mail to one or more recipients containing a hyperlink to the one or more digital photos to be shared with those recipients. By clicking on the hyperlink in most conventional e-mail software applications, a recipient can be quickly directed to all or some of the digital photos on the Web site through the recipient's browser. In some cases, the recipient may need to provide authorization information to gain access to the digital photo(s) because the user may not wish to provide open access or wants to selectively present different digital photos to different users. Another variation on this theme involves sending not a link but the actual digital photo itself to the one or more recipients. In this manner, the user does not need to attach or embed the digital photo into an e-mail; the user simply needs to identify recipients (and typically their e-mail addresses) to the Web site and the Web site software generates and sends e-mails including the digital photo(s) to the intended recipients." (emphasis added)

Similarly, the other sections of Sheridan highlighted by the Examiner also do not teach this element of the claimed invention. Col. 6, lines 13-32 and 56-63 of Sheridan describes:

"In order to assist a user in deciding whether to share further digital image sets with particular third parties, hub station 201 can be programmed to keep track of information on *how often* each third party to which an access right set has been granted, accesses the image set they are permitted to access, and further particulars on the access (for example, the images were e-mailed by the third party, and to whom, how often they were viewed or printed, and the like). Hub station

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201 can then automatically periodically e-mail the user a report on this activity or have a report available for selected time periods for the user to view upon accessing hub station 201.

The details of a particular system which incorporates a hub station and multiple remote terminals, and which further allows a particularly useful means by which digital images can be obtained, saved, and traced, from a hub station, will now be described in connection with FIGS. 3-6. Such a system, when programmed to execute the method of the present invention, can act as an image distribution apparatus of the present invention" (Col. 6, lines 13-32)"

and

"Additionally, each scanner system 6 can assign an associated identification signal to each image set signal so obtained. This assignment may be accomplished by suitable software running on scanner system 6, and is described further below. However, it will be noted at this point that each identification signal is unique in that it includes a scanner location identification which is unique for each processor-scanner station 2A to 2N." (Col. 6, lines 56-63).

With respect to these highlighted sections, Appellants are at a loss to understand how the above paragraphs in any way teach or suggest the element of a sharing rule based on *location-identifying information*. If anything, these sections further emphasize the fact that the scheme in Sheridan relies on *non* location-identifying information to determine access rights. Appellants once again reiterates that the invention, as claimed in independent Claims 1, 9, 17, 25 and 31 is directed to a system, apparatus, method and article for *location-based* image sharing. More specifically the elements of these independent claims include the limitations of defining a sharing rule that specifies with which one or more recipients images are shared based on *location-identifying information* associated with the one or more recipients images, and applying *location-identifying information* associated with an image to the sharing rule to determine the one or more recipients with which the image should be shared.

The Examiner alleges that the claims directed to location-identifying information were given their broadest interpretation and that the sections of Sheridan cited are thus analogous to the claim language. Appellants strongly disagree. By disregarding the explicit meaning of "location-identifying information", as defined in the Specification, the Examiner is essentially reading the claim as merely pertaining to "information" associatd with one or more recipients. Apellants respectfully submit that this reading of the claims is improper. The claims include the phrase "location-identifying information"

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because use of location-identifying information goes to the core of the invention. As previously discussed, the Specification describes location-identifying information as including "latitude/longitude coordinates provided by a global positioning system (GPS) included in or interoperating with the camera, manual location-identifying information associated with the image by the user in the camera or in a computer system into which the image is loaded, radio frequency identification (RFID) information provided by a RFID system included in or interoperating with the camera (e.g. a camera capable of reading RFID tags that are used to mark locations such as beacons), or any other location-identifying information associated with an image whether automatically or manually. The location-identifying information may also be associated with the image before, contemporaneously with, or after the image is taken and may be associated with the image in the camera or elsewhere such as on a computer system. Indeed, the image may be further processed by, for example, changing format, before or after the location-identifying information is associated with the image." (Specification, Pages 4-5).

The type of location-identifying information claimed herein is thus in direct contrast to the so-called "location" scheme highlighted by the Examiner in Sheridan. By disregarding the phrase in the claims, the Examiner is essentially rewriting the claims, which Appellants contend is improper. The Examiner has failed to point to any sections of Sheridan that describe "location-identifying information" as claimed and thus, Appellants respectfully submit that Sheridan simply does not teach or suggest this element.

The combination of Sheridan with Wiryaman thus still fails to teach the claimed invention. Specifically, this combination (which Appellants continue to maintain is improper) would not teach or suggest the key concept of using a rule having location-identifying information to determine which recipients images should be shared with. In other words, even if the combination of Wiryaman and Sheridan is proper (see above for discussion on why the combination is improper), the combination simply does not teach or suggest the concept of using location-identifying information in a rule to determine recipients of an image. The Examiner has failed to show otherwise and instead has reinterpreted the claim language improperly to exclude the key element of the claims.

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For at least all the foregoing reasons, Appellants respectfully submit that Wiryaman and Sheridan, alone or in combination, do not render the independent claims and all claims dependent on these independent claims (Claims 1, 2, 4-7, 9-11, 13-15, 17, 18, 21-23, 25 and 28-37)_unpatentable under 35 U.S.C. § 103 and respectfully request the rejection thereof to be overturned.

(b) Claims 3, 8, 11, 12, 16, 19, 20, 24, 26 and 27 are patentable over Wiryaman, Sheridan and/or Maali, alone or in combination.

Appellant respectfully submits that since Claims 3, 8, 11, 12, 16, 19, 20, 24, 26 and 27 are dependant on independent Claims 1, 9, 17, 25 and 31, the above discussion with respect to the rejection above is also applicable to these claims. In other words, without addressing the propriety of combining Maali with Wiryaman and/or Sheridan, Appellant submits that since Wiryaman does not teach all the elements of the independent claims and Sheridan does not teach the element suggested by the Examiner, the combination of Wiryaman and Sheridan does not teach or suggest the elements of the independent claims. The addition of Maali to Wiryaman and/or Sheridan does not overcome this and the Examiner does not suggest that Maali teaches the concept of "location-identifying information." The combination of Wiryaman with Sheridan and/or Maali thus does not render any of the independent claims unpatentable and since the dependant claims incorporate all elements of the independent claims, neither of these references, alone or in combination, renders Claims 3, 8, 11, 12, 16, 19, 20, 24, 26 unpatentable.

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VIII. CONCLUSION

It is respectfully submitted that in view of the foregoing, all of the pending claims (Claims 1-37) are patentable over the cited prior art references, alone or in any combination, and the Board is respectfully requested to overturn the rejections of record and allow this application to issue.

Respectfully submitted,

/Sharmini N. Green/

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APPENDIX A

1. (Previously presented) A method for location-based image sharing, comprising:
defining a sharing rule that specifies one or more recipients with whom an images
should be shared based on location-identifying information associated with the
image; and
applying location-identifying information associated with the image to the sharing
rule to determine the one or more recipients with whom the image should be
shared.
2. (Previously presented) The method of claim 1, further comprising making the image
automatically available to the determined one or more recipients.
3. (Original) The method of claim 2, wherein making the image available comprises
either automatically sending a copy of the image to the determined one or more recipients
by e-mail or automatically sending a link to the image on a Web site to the determined
one or more recipients.
4. (Original) The method of claim 1, further comprising converting the location-
identifying information into location data using a location database.
5. (Previously presented) The method of claim 1 wherein the location identifying
information comprises latitude and longitude coordinates.
6. (Previously presented) The method of claim 1 wherein the image is at least one of a
digital photo and a digital video.
7. (Previously presented) The method of claim 1 wherein the sharing rule specifies at
least one of a proximity to the location-identifying information, a set of location-
identifying information and a bounding perimeter of location-identifying information.

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8. (Original) The method of claim 1 wherein the sharing rule comprises a rule that images are only to be shared with the one or more recipients that are on a buddy list.
9. (Previously presented) A system for location-based image sharing, comprising:
a sharing rule defining one or more recipients with whom an image should be shared based on location-identifying information associated with the image; and
a sharing engine to apply location-identifying information associated with an image to the sharing rule to determine the one or more recipients with whom the image should be shared.
10. (Previously presented) The system of claim 9, further comprising a sending unit to make the image automatically available to the determined one or more recipients.
11. (Original) The system of claim 10, wherein the sending unit is adapted to either automatically send a copy of the image to the determined one or more recipients by e-mail or automatically send a link to the image on a Web site to the determined one or more recipients.
12. (Original) The system of claim 9, wherein the sharing engine is further adapted to convert the location-identifying information into location data using a location database.
13. (Previously presented) The system of claim 9 wherein the location-identifying information comprises latitude and longitude coordinates.
14. (Previously presented) The system of claim 9 wherein the image is at least one of a digital photo and a digital video.

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15. (Previously presented) The system of claim 9 wherein the sharing rule specifies at least one of a proximity to the location-identifying information, a set of location-identifying information and a bounding perimeter of location-identifying information.

16. (Original) The system of claim 9 wherein the sharing rule comprises a rule that images are only to be shared with the one or more recipients that are on a buddy list.

17. (Previously presented) A computer program product including computer program code to cause a processor to perform a method for location-based image sharing, the method comprising:

- defining a sharing rule that specifies one or more recipients with whom an image should be shared based on location-identifying information associated with the image; and
- applying location-identifying information associated with the image to the sharing rule to determine the one or more recipients with whom the image should be shared.

18. (Previously presented) The computer program product of claim 17, wherein the method further comprises making the image automatically available to the determined one or more recipients.

19. (Original) The computer program product of claim 18, wherein making the image available comprises either automatically sending a copy of the image to the determined one or more recipients by e-mail or automatically sending a link to the image on a Web site to the determined one or more recipients.

20. (Original) The computer program product of claim 17, wherein the method further comprises converting the location-identifying information into location data using a location database.

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21. (Previously presented) The computer program product of claim 17 wherein the location-identifying information comprises latitude and longitude coordinates.
22. (Previously presented) The computer program product of claim 17 wherein the image is at least one of a digital photo and a digital video.
23. (Previously presented) The computer program product of claim 17 wherein the sharing rule specifies at least one of a proximity to the location-identifying information, a set of location-identifying information and a bounding perimeter of location-identifying information.
24. (Original) The computer program product of claim 17 wherein the sharing rule comprises a rule that images are only to be shared with the one or more recipients that are on a buddy list.
25. (Previously presented) A computer program product including computer program code to cause a processor to perform a method of sharing an image having location-identifying information, the method comprising:
determining a recipient of the image based upon the location-identifying information associated with the image; and
making the image available to the recipient.
26. (Original) The computer program product of claim 25, wherein making the image available comprises either automatically sending a copy of the image to the determined one or more recipients by e-mail or automatically sending a link to the image on a Web site to the determined one or more recipients.
27. (Original) The computer program product of claim 25, wherein the method further comprises converting the location-identifying information into location data using a location database.

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28. (Previously presented) The computer program product of claim 25 wherein the location-identifying information comprises latitude and longitude coordinates.
29. (Previously presented) The computer program product of claim 25 wherein the image is at least one of a digital photo and a digital video.
30. (Currently amended) The computer program product of claim 25 wherein the sharing rule specifies at least one of a proximity to the location-identifying information, a set of location-identifying information and a bounding perimeter of location-identifying information.
- 31 (Previously presented) A method of sharing an image having location-identifying information, comprising:
determining a recipient of the image based upon the location-identifying information associated with the image; and
making the image available to the recipient.
32. (Previously added) The method of claim 31, wherein making the image available comprises at least one of automatically sending a copy of the image to the recipient by e-mail and automatically sending a link to the image on a Web site to the recipient.
33. (Previously added) The method of claim 31, further comprising converting the location-identifying information into location data using a location database.
34. (Previously added) The method of claim 31, wherein the location-identifying information comprises latitude and longitude coordinates.
35. (Previously added) The method of claim 31, wherein the image is at least one of a digital photo and a digital video.

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36. (Previously added) The method of claim 31, wherein determining a recipient of the image is performed using at least one of a proximity to the location-identifying information, a set of location-identifying information and a bounding perimeter of location-identifying information.

37. (Previously added) The method of claim 31, wherein making the image available to the recipient comprises making the image available to the recipient only if the recipient is on a buddy list.

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EVIDENCE APPENDIX

None

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RELATED PROCEEDINGS APPENDIX

None